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The European Union has yet to figure out what it wants to be when it grows up: federation, confederation or *tertium genus* between centripetal and centrifugal forces ... *waiting for Godot*

Unia Europejska musi jeszcze zdecydować, czym chce się stać, gdy dorośnie: federacją, konfederacją czy genem tertium pomiędzy siłami dośrodkowymi i odśrodkowymi... czekając na Godota

Abstract: What is the European Union? A federal state? A confederation of states? Neither one nor the other but rather a tertium genus of the legal system? For years, the Doctrine has been questioning the nature of the European Union, also analyzing the jurisprudence of the Court of Justice EU and of the Constitutional Courts and Supreme Courts of the Member States; a strong debate between two visions of Europe: one more federalist and another closer to the Nations and the states. This paper, after a detailed examination not only of a legal nature, reaches conclusions of special doctrinal interest.

Keywords: federalism – centralization – decentralization – European Union – functionalism – referendum- internationalization – Maastricht Treaty

Streszczenie: Czym jest Unia Europejska – państwem federalnym czy konfederacją stanów? Ani jedno, ani drugie, ale raczej rodzaj tertium systemu prawnego. Doktryna od lat kwestionuje istotę Unii Europejskiej, analizując także orzecznictwo Trybunału Sprawiedliwości UE oraz Trybunałów Konstytucyjnych i Sądów Najwyższych państw członkowskich; silna debata pomiędzy dwiema wizjami Europy: jedną bardziej federalistyczną,

a drugą bliższą Narodów i stanów. Artykuł ten, po szczegółowej analizie, dotyczy nie tylko natury prawnej, ale dochodzi do wniosków o szczególnym znaczeniu doktrynalnym.

Słowa kluczowe: federalizm, centralizacja, decentralizacja, Unia Europejska, funkcjonalizm, referendum, internacjonalizacja, Traktat z Maastricht

Federalism – idea, structure, value

"Abbiamo tutti dentro un mondo di cose: ciascuno un suo mondo di cose! E come possiamo intenderci, signore, se le parole ch'io dico metto il senso e il valore delle cose come sono dentro di me; mentre chi le ascolta, inevitabilmente le assume col senso e col valore che hanno per sé, del mondo com'egli l'ha dentro? Crediamo di intenderci; non ci intendiamo mai!"[1],[2].

Pirandello in his work "Six Characters in Search of an Author", with powerful descriptive language, takes us through the impossibility of communicating between individuals where each locution does not assume a common meaning equally understood by all. The word needs to be perceived in its meaning in the same way by everyone, otherwise semantic Babylon could lead to a fatal as well as inevitable impossibility of mutual understanding.Legal language is not exempt from this criticality, on the contrary, it is more than ever involved in it, on a par with that ordinal phenomenology classified as federalism (*our Godot*), not easily harnessed in a given dogmatic categorization, having scholars to question what role the federalism plays within the perimeter of the European Union.

If there is an ectoplasmic existential dimension including alpha and omega, it is precisely the expression "federalism" that makes it real[3].

Federalism evokes immense spaces and invokes ethnic, social, linguistic and religious groups markedly differentiated from one another;

[1] L. Pirandello, *Sei personaggi in cerca d'autore,* Einaudi ET Classici, Turin 2014, p.166.

[2] "We all have within us a world of things: each one his own world of things! And how can we understand each other, sir, if in the words I say I put the meaning and value of things as they are within me; while those who listen to them inevitably take them with the sense and value they have for themselves, of the world as they have it within them? We believe we understand each other; we never understand each other" (translation carried out by the Author).

[3] F. Giulimondi, *Un'occhiata al Federalismo*, [in:] M.Vescovi, *Stati Uniti d'Italia. Obiettivo 2028*, Manuel Vescovi, Rome 2022, pp. 43-59.

federalism pushes towards systems that allocate competences, powers, normative capacity on multiple levels of government, from the central to intermediate levels, up to the spheres of administration closest to the communities they represent; federalism as an ordinal system and philosophy of "*Auctoritas*", attempt to resolve the problems that hinder the relational dynamics between nations and ethnic groups; federalism as an organizational module suitable for providing effective and efficient responses to the recipients of the action of public authority.

History, geography, traditions flank the federalist dimension, a dimension, even before being legal, regulatory and institutional, of the soul of people-citizens and essence of a People. A People is born federalist because it is aware that he has to manage ethnic, social, linguistic and religious populations that are too different to have the same rules applied to them. Certainly, examples in this regard are numerous, starting from the former Yugoslavia, Belgium, the Swiss Confederation and India, although the Canadian legal system is of particular interest for having included in Article 27 of the 1982 Constitution a general clause interpreting the text: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians".

A People is born federalist because its history is the result of clashes, even of a warlike, civil or "classical" nature, which require legal paths that settle ancient enmities and shorten sidereal differences in anthropological views (United States of America). Federalism was born on agreements made by the Founding Fathers, aware of the territorial dimensions and the numerosity of the population components that compel a layered, multi-level system of lawmaking, in which the largest "group" includes the one with less cabotage and in which, however, the placement of resources, skills, functions and powers is carried out according to criteria of reasonableness aimed at bringing the Administration's solutions closer to those closest to it.

Federalism is the highest manifestation of decentralization and, according to the etymological origin of the term, to decentralize means to transfer anything from the center to the periphery.

Dialectics of centralization and decentralization

Centralize and decentralize are verbs which, indeed, possess elements of extreme relativity, elasticity and vagueness. A fully centralized state exists only in university lectures, at the same way of a fully decentralized state, which equally need a central government to prevent the evaporation of the state order.

The states in their objectivity are centaurs, Giano Bifronte, in which elements of centralization and decentralization coexist: it is the different combination and intensity of the two factors that makes an order either with a centralizing vocation, or with a decentralized vocation, to the point of having an authentically federalist feeling.

A greater presence of decentralization requirements will inevitably lead to a federalist dimension: the combined allocation of administrative, regulatory functions and a certain amount of decision-making and political power to the intermediate and local levels of government enhances the legal system from "merely" decentralized to pluralist and federalist. The longitude and latitude of the power granted to the various levels of government, the breadth of the spectrum of "command" attributed to them, identify or not an order as federalist. The intensity of the attributions of administrative, regulatory, fiscal, economic-financial and, finally, decision-making and political functions and powers, identify a state "with sympathies" for centralization or for decentralization. The type of intensity of the attributions can emphasize central constitutional bodies which also dispose on behalf of and in the interests of intermediate and local authorities, or the opposite, the strengthening of the role of the representatives of the territorial entities that make up, not only geographically, but also politically and in decision-making, the legal connective tissue.

Federalism is that institutional regime in which centrifugal forces overpower centripetal ones without, however, ever prevailing over them. A federal state remains so because the apex, the center, the center of gravity of command, maintain essential unifying and non-disruptive powers in the areas of economic-financial, national security, defense and international relations. These are laws of physics that apply even to the institutions: federalism is the movement of political and public law thought in which a central-federal state decentralizes many administrative, regulatory, economic and political-decision-making tasks to type of federal state), stopping, however, on the riverbed just before the torrential waters that its constituent public territorial structures

(variously named according to the can operate the unraveling of the state itself arrive. The preservation of the centralizing elements by the central-federal state allows for the subsistence of a unitary political state warp that safeguards its very existence, preventing the failure of the embankment and the breaking point of the constitutional system. Defense from external dangers, protection of the internal security of citizens, economic, financial, industrial, fiscal and trade policy, mark the boundary that distinguishes a federal state from a confederation of states. The federal state is the holder of sovereignty and the ultimate force over all the persons, natural and legal, that form it and give it its vital imprint: the federal state coexists with the member states which compose it and enjoy powers similar to the former, but never superior to it.

Identity and responsibility are the cornerstones of federalism: identity as recognition of the customs, traditions, peculiarities of all kinds that characterize the different communities residing in a specific place; responsibility as the ability of the decision-making bodies in charge of a territory-state to be accountable for the political, programmatic, social and economic results achieved, in relation to the resources allocated and managed.

Consideration should be given to whether federalism is at the antipodes of the procedure of "denationalization" and concomitant "supra-nationalization" of state legal systems, a process consequent on the conferral of state public powers to international entities lacking democratic legitimacy, or with an "unsatisfactory" popular investiture.

Federalism is a Weltanschauung not of the "World" but of the "State", a rational, political, philosophical, legal and normative construction. From here we need to start in order to drop these reflections into the European dimension.

European Union as a borderline case

What is the European Union? Is it a constitutional or international order? Does it already have a constitution, or should it give itself one? Is the EU a federation or is it a confederation?

If it is a confederation, what type of confederal arrangement is it? Which of the past configurations does it resemble? And if it is a federation, what type of federalism does it express? These questions continue to resonate in the public-legal sphere with insistence and sometimes monotony.

I say at the outset that wanting to pigeonhole the complex institutional reality of the European Union within the conceptual categories developed over the decades by constitutional dogmatics is inadequate. To re-propose the ancient federation/confederation dichotomy is to remain anchored to the positivistic formalism which privileges norms over processes and aims at the identification of the 'locus' of sovereignty, not coincidentally precisely the first category to be challenged by Europeanisation and globalization of constitutional law. Indeed, the distinction between federation and confederation has traditionally been constructed by doctrine by elaborating on the implications of the transition from the American Declaration of Independence in 1776 to the U.S. federal Constitution in 1787[4]. The distinction between federation and confederation has corresponded to the distinction between constitution and treaty and between national level and international level. According to the traditional positivistic approach, the federal constitution is a national act granting the federation alone sovereign powers, amendable by a qualified majority vote of the member states, while the confederation is a treaty of international law that leaves sovereign prerogatives to the constituent entities, amenable to amendment only by respecting the unanimity principle. Transporting the conceptual categories of state institutions of the 18th and 19th centuries into the context of a confederation of national constitutions of the 21st century means comparing very different institutional entities, endowed with incommensurable powers, under historical and especially economic circumstances that are difficult to compare.

As we have previously seen exhaustively, federalism is a normative concept that regards an articulation of public powers in multiple areas, with a combination of local self-regulation and shared regulation. The value element to which federalism tends is a combination of unity and diversity, of promoting cultural and identity specificities within a larger political union. Federalism is a value concept, to which institutional structures may more or less tend[5].

The term federation, however, is a descriptive concept that applies to particular forms of political organizations. It refers to a broad category of political systems in which, in contrast to the single source of authority found in unitary systems, there are two or more levels of government

[4] A. Di Martino, *Il territorio: dallo stato-nazione alla globalizzazione. Sfide e prospettive dello stato costituzionale aperto*, Giuffré, Milan 2010.

[5] A. Vespaziani, *Federalismo [Dir. Cost.],* „Treccani Enciclopedia del Diritto on line", 2013.

that combine shared regulation through common institutions with local self-regulation by the governments of intermediate territorial entities (such as Regions, Provinces or autonomous communities) and the "primary" ones (Municipalities).

This broad genre embraces a wide spectrum of non-unitary forms such as unions, federations, confederations, *federacies*, associations of states, leagues and functionally connected authorities. The common structural characteristics of federations as specific forms of federal political systems are: two levels of government acting directly towards citizens; a formal constitutional distribution of legislative and executive powers and an allocation of financial resources between the two levels of government that ensures areas of respective autonomy; provision for representation of the various regional instances through territorial representation chambers or a system of intergovernmental connections; a written constitution that can be amended not unilaterally but only with the consent of a significant portion of the constituent units; an arbiter to resolve disputes between governments (constitutional courts or advisory popular referendums); proceedings and institutions that facilitate intergovernmental collaboration in those areas where governmental responsibilities are shared or overlapping.

The "federal state" is also a descriptive concept, connoting the combination of federal principle and state form. However, the organizational and functional variants of existing federal states being such and so many to prevent the construction of a unified theory of the federal state capable of adapting to all the phenomenal diversities in chameleon-like ways, the comparative approach has often been limited to make a reconnaissance -classification of federal political systems. While it is possible to find in the ancient world many traces of federal institutions and political social realities that gave themselves legal orders inspired by federal principles[6], it is only with the American Revolution and with the adoption and

[6] It is reasonable to consider the Federal Pact (*Bundesbrief*) concluded on August 1,1291 between the valley communities of Uri, Schwyz and Nidwalden in Swiss territory as the first complete form of an Act having federal character, aimed at committing the Parties to mutual aid against all those who had done them violence or wrong, to reject the presence of foreign judges and to maintain the existing power relations unchanged ("Homines vallis Uranie universitasque vallis de Switz ac communitas hominum Intramontanorum Vallis Inferioris"). The Pact also contains elements of criminal and civil procedure as well as rules for the settling disputes among the stipulants. The Federal Pact has been officially considered the founding instrument of the Swiss Confederation only since the end of the 19th century. A major contribution to making it so was made by the Federal Council, which – on the basis of this document – celebrated in 1891 the day of national commemoration, declaring August 1, 1899 a national holiday (cf. *funditus*, S.Solomonova, *La Costituzione svizzera: Aspetto storico e giuridico*, Ed. Sapienza, Rome 2021).

ratification of the U.S. federal Constitution that we have the "Big Bang" of federal modernity.

In light of these categorizations, the EU must be denied the qualification of a federal state: so, does the European Union substantiate a confederation of states? In this regard, Habermas sharply observed that "indeed we will be tangled up in the next political-constitutional steps, as long as we move in the oscillating conceptual spectrum between confederation of states and federal state or we remain content to vaguely reject this alternative"[7].

The European Union could then be characterized as an example of "federalism without federation". Its origins, transformations and institutional structures have been inspired by federal ideas and strategies without, however, ever reaching the formal state of federation. The EU is thus an intellectual puzzle, an institutional experiment that resists precise conceptualizations. Most observers have ended up noticing that the EU is a sui generis institution that gravitates within the federal galaxy but can be subsumed within a process that we might call *community-building*, that is, in a process aimed at integrating political communities and legal systems. The combination of the expansion of qualified majority voting procedures and the persistence of the international treaty as a legal basis corresponds to the coexistence of federal elements with confederal and intergovernmental features. "At a general glance – quoting Vespaziani – the current institutional structure appears as a decentralized federal union of states and citizens. Although not a state, the European Union is a political union with federal and confederal elements, a new institutional mix that resists classification into categories forged on past experiences and is often characterized as a new form of confederation, or as a new federal model"[8].

Considering what has been said so far, what is the present and future vision of the EU?

[7] J. Habermas, *Questa Europa è in crisi*, Laterza, Bari 2012, p.51.
[8] A. Vespaziani, *L'Unione europea: federazione o confederazione?,* „ApertaContrada", 2014, p.2.

Between functionalism and federalism – two visions of integration

The competing visions are the functionalist and the federalist. The former deploys a strategy for the domestication of nationalism[9] and protectionism of individual state systems by eroding national sovereignty. The founding fathers of European functionalism, Schuman and Monet, believed that the modernization of France and Germany would be able to lead to the enlargement of national markets and, consequently, to the political stabilization of nations that had shocked the planet with their power policies. According to the functionalist conception, a free trade zone would be established first, then a customs union and, finally, a common market. This first phase of negative integration, in which community law would be mainly concerned with removing the national provisions that hindered interstate trade, would be succeeded by a phase of positive integration in which community law and institutions would be concerned with coordinating national policies through common bodies, to achieve first an economic union, then a monetary union and, finally to a full political-constitutional union. Functionalist technocrats have insisted that integration is made for Europe and not by Europe, thus self-legitimizing a supranational bureaucratic class uninterested in criticism from national public opinions. So there came into existence, at a supranational level, a technocratic class that was distant and distinct from the national democratic and social level. Thus, while post-dictatorial democracies such as Italy and Germany were "re-constitutionalizing" themselves through the adoption of new fundamental laws, the international organization of which they chose to be part was developing shared solutions through intergovernmental linkages in the hands of the executive powers, far from the control and interest of national public opinions.

Altiero Spinelli's federalist vision of the European integration process believed it was possible to translate the U.S. experience of the late eighteenth century to the European territory of the mid-twentieth century: the United States of Europe.

[9] On a topic of special interest, see C.A. Ciaralli, *Populismo, movimenti anti-sistema e crisi della democrazia rappresentativa*, Editoriale Scientifica, Naples 2022.

Spinelli hoped for the democratization of the European Parliament – a place of condensation of constituent power -, the recognition of the principle of subsidiarity and the extension of the principle of the division of powers at the territorial level, arriving to a true federal structure. The Ventotene Manifesto of 1941 by Altiero Spinelli, Ernesto Rossi and Eugenio Colorni is one of the classic texts of European federalism in which the critique of the system of European nation-states, the claim of absolute sovereignty they have advanced and of the disastrous outcomes of the power policies induced by *the balance of power* system is articulated: "The problem which in the first place must be solved and failing which any other progress is but appearance, is the definitive abolition of the division of Europe into sovereign national states"[10]. The radically federalist vision birthed in confinement on the island of Ventotene was aimed at overcoming of the nationalistic perspective and to a global vision of the federative movement, causing the sociologist Beck to qualify the European Union as "an experiment in institutionalized cosmopolitanism"[11].

In Monnet's functionalist conception[12], constitutionalism and federalism appeared disjointed. For Monnet, in fact, integration should have proceeded according to gradual, cumulative, sectoral methods, such that a point of quantitative accumulation would be reached, which would at some point provoke a qualitative transformation. This final leap into federalism could have occurred only when "the forces of necessity" would have made it natural in the eyes of Europeans.

In Spinelli's federal outlook[13], however, federalism and constitutionalism constituted an inseparable pair, so much so that he called for the advent of a constituent assembly capable of forging a federal constitution for the United States of Europe.

[10] A. Spinelli, E. Rossi, *Il Manifesto di Ventotene*, Ultima Spiaggia, Ventotene 2016. p.31.
[11] U. Beck, E. Grande, *L'Europa cosmopolita. Società e politica nella seconda modernità*, Carocci, Rome 2006, p. 34.
[12] J. Monnet, *Cittadino d'Europa*, Rusconi, Milan 1978.
[13] G. Napolitano, *Altiero Spinelli e l'Europa*, il Mulino, Rome 2007.

The crisis of constitutionalisation and the asymmetries of the EU system

The attempt to draft a European Constitution went in this direction. Having felt the need to endow itself with its own Charter of Fundamental Rights – proclaimed at the Nice summit in December 2000[14] – with the Laeken declaration of December 15, 2001[15] the Member States laid foundations for a convention responsible for drawing up a draft constitutional treaty. Without changing the internationalist rule of unanimity of ratification, the constitutionalist aspiration was being quashed by public opinion in France and the Netherlands following the referendums both held in 2005[16]. The resounding popular rejection of the Treaty adopting a Constitution for Europe, signed in Rome on October 29, 2004[17], pushed national executives back on the tracks of technocratic functionalism, abandoning the European constitutional project and falling back on a project of lesser ambition such as the Treaty of Lisbon of December 13, 2007 – which came into force on December 1, 2009 – aimed at enabling the functioning of an international organization founded by six countries and then enlarged to twenty-seven members[18]. The Treaty of Lisbon lacked "constitutional flavour", as President Napolitano called it in his speech at Humboldt University on November 27, 2007[19].

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[14] European Council, Cologne, 3-4.06.2000 r., deemed it appropriate to bring together the fundamental rights recognized at Union level in a Charter, in order to give them greater visibility. The Charter was officially proclaimed in Nice on December 7, 2000 by the European Parliament, the Council of the European Union and the Commission, then became legally binding in the adapted version on December 12, 2007 in Strasbourg by Parliament, the Council and the Commission with the entry into force of the Treaty of Lisbon (signed on December 13, 2007) on December 1, 2009 (ex. art. 6 TEU).

[15] European Council, Laeken, 14-15.12.2001 r., https://www.consilium.europa.eu/media/20950/68827.pdf (access: 29.03.2025).

[16] The French referendum was celebrated on May 29, 2005 with 55% of the electoral body voting against the approval of the so-called European Constitution, following the Spanish referendum on February 20, 2005 which, ex adverso, saw the clear prevalence of supporters of the European Charter with 81% of participants; the Dutch referendum was celebrated on June 1, 2005 and, similarly to the French referendum, the result was 61.54% against the approval of the Treaty.

[17] On the complex topic of the so-called European Constitution for a rigorous and timely overview, see A.J Menéndez, J.E. Fossum, *La peculiare costituzione dell'Unione Europea*, Florence University press, Florence 2012.

[18] There were 28 Member States with the United Kingdom until its exit from the EU (so-called "Brexit") on January 31, 2020, having joined on January 1, 1973.

[19] G. Napolitano*, Lectio magistralis*: *Sciogliere l'antico nodo di contrastanti visioni del progetto europeo. Far emergere una nuova volontà politica comune*, Humboldt University, Berlin 2007, https://presidenti.quirinale.it/elementi/54320 (access: 23.03.2025).

The last question that needs to be asked is whether, beyond a formal constitution proper, elements of a constitutional nature can be traced in primary and secondary legislative production.

The functionalist vision has identified elements of a constitutionalizing process in the jurisprudence of the Court of Justice of the European Community (later of the EU) and in its reception by the national constitutional courts: the emergence of the principles of direct effectiveness and supremacy of European Community law (and later, European Union law) over national rules were seen as the characterizing features of a material constitution constructed through judicial interpretation.

The federalist vision, by contrast, insisted on the need to achieve a political transition through the drafting of a truly federal European Constitution.

The two visions, today hybridized and merged into an institutional reality inspired by both, confirm the antiquity of equating federalism with the federal state. Whether we speak of the constitutionalizing of the founding treaties or the internationalization of national constitutions, the *ius publicum europeum* shows the impracticability of the traditional national/international distinction on which the doctrine had built the constitution/treaty distinction[20].

The peculiar normative structure, in which the supremacy of European Union law over national rights is not matched by a supremacy of the powers of the European institutions over national ones, expresses an example of post-democratic executive federalism that threatens to undermine the very substratum of political legitimacy called upon to underpin it. State examples of executive federalism, such as Germany's, still rest on a basis of constitutional federalism that reserves to the federation the competence to proceed with constitutional revision. In Germany, too, federal law prevails over state law, and federal law is implemented in principle by the administrations of the Länder; however the organs of the Federation have the possibility of amending the constitution. In the EU, by contrast, the supremacy of EU law over national law, and the principle that the rules of EU law are implemented by the national administrations, is not accompanied by the power of the bodies of the European Union to amend the treaties, so that the states largely remain

[20] I. Pernice, *The Treaty of Lisbon: Multilevel Constitutionalism in Action*, "Columbia Journal of European Law", 2009, v. 15, 3.

"Lords of the Treaties", thanks even with the constraint of unanimity imposed for the Treaty amendment.

This asymmetry illustrates the ford in the middle of which the EU's institutional set-up finds itself today. Perhaps, even before asking what nature the European Union possesses, in what direction it needs to proceed and what paths it should take, we should ask ourselves what Europe is, what its roots are and what its future is, what historical role historic it should and can still play, especially in such a dramatic contingency, with the Russian-Ukrainian conflict at our doorstep and yet another Israeli-Palestinian war not too far away. A sense of disorientation and vertigo may at this point overtake.

The Spanish philosopher and sociologist José Ortega y Gasset runs to our aid with his great wisdom: "This feeling of sinking is the great stimulant for man. In feeling that he is overwhelmed by doubts, he reacts with his deepest energies, his arms flailing to rise to the surface. The castaway turns into a swimmer. The negative situation turns into a positive one. Every civilization was born or reborn as a swimming movement of salvation. This secret struggle of every man with his inner doubts, there in the solitary enclosure of his soul, gives a precipitate. This precipitate is the new faith by which the new age will live"[21].The "inner doubts" and the "new faith" that Ortega y Gasset speaks can lead, perhaps, the twenty-seven states to a rethinking that could cause an improvement not only of the organization now called the "European Union", but also, in systemic and economic terms, of the national states themselves.

Back to the basics: national constitutions as a source of strength for the European Union

It should certainly not be forgotten that the strength of EU law draws its vital origins from national constitutional rights.

From this archetype it would be appropriate to draw as a corollary the need to return to the origins of this organization, to its primal nature and function: to remove any further obstacle and limitations to the free development of national economies, facilitating more and more

[21] J Ortega y Gasset, *Meditazione sull'Europa*, Seam, Rome 2000, p.57.

interaction between the economies of Europeans states and, between them, individually or as a unit, and the other major economic, financial and commercial areas of the world. Paying special attention to the tax system in the EU, direct and indirect, whether it targets natural or legal persons, or affects income or consumption, would lead to a sure strengthening of economic exchanges among European states and an equally sure increasing of the economy and GDP of the "organized" Union.

The establishment of a maximum and minimum limit to taxation within the European Zone would make economic competition between commercial and entrepreneurial operators fairer, more balanced and harmonious and would avoid a sort of social dumping caused by the displacement of entrepreneurs and freelancers to states where taxes are significantly lower, while they would continue to benefit, for example, from the health service of the state of origin. The destination country would likewise increase its "volume of business" and, consequently, its tax revenues, while the state of origin would continue to provide social benefits with an inversely proportional decrease in the "volume of business" and tax revenues.

We should return to the real economy by removing all the burdens, such as fiscal, administrative and bureaucratic ones, to unlock all its energies and potential. The liberation of the economy, first and foremost, from a fake and asphyxiating environmentalism which would put it in a corner, lashed by competition with the great economic giants (such as China, India and Brazil), would bring Europe back to its spirit original, to that of De Gasperi, Adenauer and Schumann: a great economic empire and an architecture of human values between the West and the East, from antiquity to modernity; a social, commercial, creative, intuitive space filled with *genius loci*, *amor fati*; an Institution endowed with the mission of representing the Past and Future of almost 450 million of its citizens with at its center the "person" in its "identity" elaborated by centuries of natural law thought. And in order to protect such "identity" of the individuals it is necessary to protect the constitutional identities of each state as well.

Each constitution, the *Grundnorm* of every state system, represents not only the normative skeleton and backbone of the founding principles and values, but the history of each member of that community, a community interwoven of customs, traditions, language and religion. The Constitution makes visible the identity of a People by reversing in highly legal and semantic form its Weltanschauung, a communal and social vision that projects itself from the past into the future.

A return to the period before the signing of the Maastricht Treaty[22] which dismantled the Economic Community to replace it with a political Union, is an option to be seriously considered: a return to the interstate and intergovernmental legal regime that intervenes in the "cross-border space" – borrowing the argumentative approach of Marco Dani and Agustín José Menéndez[23] – on which individual states have no power to affect, in order to regulate the sphere of trade and exchange between business and economic operators (expressions of a real economy) within a dimension beyond national borders and placed in the "a-state middle land" between territorially circumscribed legal regimes. European law substantiates the regulatory statute governing economic and commercial activities between public and private entities belonging to different European states and operating outside of them. Community-level legislative and administrative intervention would develop and strengthen national interests that would also be protected on European level, which constitutes a large social and economic interstice established between and above the Member States.

This turning back would push Europe and its component states in the direction of a new Copernican revolution all to their benefit. Building on Italian legal expert Mauro Cappelletti's project of "integration through law"[24], we consolidate the idea that it is law, and not financial, monetary and banking paradigms, that is the foundation on which to build and rebuild a European organization free of the burdens, constraints and obligations that have piled up since February 7, 1992.

European construction cannot disregard the national constitutions which constitute its floor, walls and ceiling, the alpha and omega, from which everything has its source and all its fulfillment: "the European constitutional imagination – Dani and Menéndez assert – must rely as a priority on the set of national democratic and social constitutions"[25].

Perhaps European citizens would rediscover, through this renewed and reinvigorated community of states, their own Judeo-Christian identity and their own Hellenic and Roman cultural traditions.

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[22] Treaty 7.02.1992 r. – European Union Treaty (OJEC nr C 191, 29.07.1992 r., poz.0001 – 0110).

[23] M. Dani, A.J. Menéndez, *Costituzionalismo europeo. Per una ricostruzione demistificatoria del processo di integrazione europea*, ESI, Naples 2022.

[24] One among all, see M. Cappelletti, *Dimensioni della giustizia nelle società contemporanee*, Il Mulino, Rome 1994.

[25] M. Dani, A.J. Menéndez, op. cit., p.37.

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